



JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE MEETING

October 3, 2017

Room 643

The Joint Legislative Administrative Procedure Oversight Committee met on Tuesday, October 3, 2017, at 1:00 p.m. The meeting was held in Room 643, Legislative Office Building. Members present were: Senate Members: Senator Andy Wells, Senator Dan Barrett, Senator Shirley Randleman; House members: Representative Jonathan Jordan, Representative Elmer Floyd and Representative Jon Hardister.

Senator Andy Wells presided.

The opening meeting of the Joint Legislative Administrative Procedure Oversight Committee (APO) was called to order by Senator Andy Wells, Chair, at 1:00 p.m. He recognized the Sergeants at Arms, Billy Fritscher, Larry Hancock and Frances Patterson from the Senate with Young Bae, David Linthicum and Joe Moran from the House and thanked them for their assistance.

Senator Wells recognized Dr. James Broughel from Mercatus Center at George Mason University. He thanked the Committee for inviting him to speak. He explained he was going to touch on a few different points of a project he was involved in to quantify regulation across the 50 different states and said he had produced a short report on the regulatory environment in North Carolina and would discuss the findings of his report.

Dr. Broughel spoke about the connection between regulation and economic growth and why it was a good time to consider regulatory reform as a means to boost growth given the country in general and North Carolina, in particular, are growing very slowly at the moment. He also spoke about the successful experience in British Columbia, Canada that took place about 15 years ago. Canada is actually at the forefront of regulatory reform right now.

Dr. Broughel explained Mercatus Center is involved in an effort to quantify regulation across the 50 different states. They have very little information on how much regulation exists in each state, what kind of regulation exists and how the different states compare to one another in terms of how much regulation exists. They are trying to better understand the regulation effect through RegData, which is distinguished from the federal RegData project. They are looking at both federal and state regulation. Most state codes are too long for a researcher to read from start to finish. For example, the North Carolina administrative code contains about 7 ½ or 8.7 million



words in the code and it would take 12 weeks to read if you spent 40 hours a week reading regulations at a normal pace and obviously it isn't practical.

The Mercatus Center uses a text analysis software computer program to analyze state codes and pull out key information from those codes. They count the number of words in the code or count the number of restrictive words, which are words like "shall, must, may not and required" to signify legal obligations or prohibitions of any kind. They can figure what the biggest areas of regulations are at the state level and also the industries that are being targeted the most by state regulations.

North Carolina's regulatory code has about 109,000 of these regulatory restrictions in the code. That puts it somewhere in the middle of the pack in terms of regulatory restrictions of the states Mercatus has looked at so far. They have looked at 14 states out of 50. They plan at looking at all 50 states but it takes time to go through every state's code. There is variation in regulation levels across states. As an example New York has the most restrictions of any state at about 307,000 regulatory restrictions, which is three times as many as North Carolina. There are other states like Arizona that have 64,000 restrictions. North Carolina has about 70% more restrictions than Arizona and that is quite a bit of variation. One of the biggest areas of regulation in North Carolina is associated with environmental quality, which is the biggest title in the North Carolina administrative code. It has almost 27,000 regulatory restrictions in it. The second largest title is health and human services with 23,500 in the administrative code. The third largest title is occupational licensing boards and commissions where there are about 114,500 restrictions.

You might not be very surprised by the industries that tend to be the most regulated in the state. The most regulated is utilities which comes in as the most regulated in North Carolina, more than nursing and residential care facilities, ambulatory health care services, walk-in health care services and various kinds of manufacturing. Health and environment tend to be some of the dominant forms of regulation. It isn't surprising that these industries are among the most regulated in the state. There is increasing academic evidence connecting the level of regulation and economic growth.

Michael Mandel, an economist at the Progressive Pulse Institute in Washington, DC, likens the effect of regulation on the economy to dropping pebbles in a stream. The first pebble may not slow the flow of water in a noticeable way. A thousand pebbles might start to slow it and 100,000 or a million pebbles might block the stream altogether. This shows the accumulation of regulations that are most important or have the biggest impacts. Growth has slowed fundamentally in the United States relative to the kind of growth we saw in the 20th century. We were growing about 3 ½ % a year in terms of GDP growth annually in the second half of the 20th century. In the last decade, we've only grown about 1.4% annually as a nation.

North Carolina is growing even slower at just under one percent a year. The best estimates from scholars at the world bank and from colleagues at Mercatus Center, is that there aren't good



measures of the effect of state regulation yet, but federal regulation may be slowing growth on the order of one to two percentage points a year in the United States. That might not sound like a lot and sounds like a small number but it turns out that as a result of compounding, this can make a huge difference over time.

So if you are growing at three percentage points annually, your real GDP is going to double in about 24 years. But if that growth rate falls to one percent a year, the doubling time gets pushed further out into the future. It now takes about 70 years, rather than double two or three times in a lifetime, you might just double once in a lifetime and these effects get bigger over time. They will matter the most for people in the future, for our children, for our grandchildren and for their kids. At the current rate North Carolina is growing, if that growth continues, it would take about 87 years per your real GDP to double. With this background in mind, where the states have quite a bit of regulation on the books, at least hundreds of thousands of restrictions in some case and that we're growing more slowly than we did in the past, policymakers might be thinking of regulatory reform as an option to boost growth.

Dr. Broughel spoke about what happened to British Columbia about 15 years ago which turned out to be proven successful. They cut the number of requirements that were on the books over the last 15 years. They put a cap on how much regulation they would allow to be in place at any given time. They put in a policy that for every new requirement, they were going to eliminate two old requirements. They did this for three years and cut the number of requirements by a third within three years. They put in place a permanent 'one in', 'one out' policy that for every new requirement, they eliminated one. They saw the number of requirements on the books continue to fall even to this day.

The policy is still in place and they have cut the number of requirements by 47% in total. This experience was deemed so successful that the federal government in Canada has copied their model. In 2015, they passed a law that said for every new regulation, they are going to eliminate one of the equivalent burden. It passed the Canadian parliament by a vote of 245 yes votes to one no vote. This kind of policy can induce a culture change to regulatory agencies. A policymaker in British Columbia noted that after this cap was put in place, her role changed from a regulation maker to a regulation manager, someone who oversees a portfolio of regulations that's constantly evolving, changing as the times change as technology changes.

Regulators at the state and federal level have the most growing and learning to do. In 2011, President Obama required agencies to look back at old regulations on the books. This cap approach does something similar and there are a lot of benefits that can come from this kind of reform approach. British Columbia experienced stagnant growth similar to what the United States is experiencing now. The reform kicked in in 2001 and they have actually experienced a turnaround. They are now the top performing major province in Canada. Other factors besides regulatory reform played a role and they were able to 1) cut their requirements in half to cut their code in half. 2) It was also accompanied by an economic turnaround in the province and 3) it



was done without any significant downsides related to public health or the environment. One advantage that states have now that wasn't available to policymakers in British Columbia is the data that is produced with the Mercatus RegData project. Mercatus can measure whether a state's regulatory code is growing over time, how it compares to a state's neighbor, technology available to help track regulation levels across time and whether specific agencies or titles in the code are growing faster than other titles.

Senator Wells recognized Rep. Jonathan Jordan. Rep. Jordan asked Dr. Broughel how the Mercatus Center analyzed regulation across the state. How does it compare states to each other? What parameters and variables are used?

Dr. Broughel said Mercatus Center's main measure is regulatory restrictions and they are defined as the words; "shall, must, may not, prohibited and required." These five key terms are counted in the code. Since it is consistent from state to state, comparisons are made as to how many of these terms exist in the states code. Regulated industries are slightly more complicated but it involves searching for key words relevant to particular industries in the code and assigning probabilities to each section of the code.

Rep. Jordan asked where North Carolina was in relation to other states.

Dr. Broughel responded that there is a chart of 14 states and North Carolina is the 6th lowest state or the 8th most regulated state depending upon how you look at it. Most states have between 100,000 and 170,000 regulatory restrictions of the 14 states Mercatus Center has looked at so far. North Carolina is in the middle of the pack by that measure. There are some outlying states like North York or Illinois that have quite a bit more regulatory restrictions. Arizona and Michigan have considerably lower levels.

Senator Wells recognized Rep. Elmer Floyd. Rep. Floyd asked Dr. James Broughel what the key words in each regulatory restriction are.

Dr. Broughel replied: "shall, must, may not, prohibited and required." The methodology behind this database was published in an article called "Regulation and Governance" by Patrick McLaughlin, a colleague at the Mercatus Center, and Omar Al-Ubaydli, a former George Mason University economics professor.

Senator Wells recognized Rep. Jon Hardister. Rep. Hardister asked Dr. Broughel about the 10 Canadian provinces, if any of the other provinces are working on the change.

Dr. Broughel replied Manitoba just passed a very similar policy. Manitoba initially did a 'one in', 'two out' policy for a few years and turned it into a 'one in, 'one out' policy. Texas just passed a policy very similar just this year.



Senator Wells recognized Rep. Elmer Floyd. Rep. Floyd asked Dr. Broughel if North Carolina implemented a policy sent to Canada. He said most of the time, new regulations always address old regulations.

Dr. Broughel suggested an oversight body to make a determination whether a new regulatory burden is being added or a regulation might be eliminating burden, whether any offset for that new regulation is meaningful.

Rep. Floyd asked Dr. Broughel if any agency wants to implement a new regulation, they should compare that with something similar. For instance, if there are 5 legislations, would that be in competition with new or similar ones.

Dr. Broughel said if agencies would group them altogether into one regulation that would identify what part of the regulation is new and what the offsets are. So if there are six requirements being eliminated and one being added, they would be grouped into one rulemaking. Hopefully that would distinguish which was which. That's why it is important that an oversight body or someone in charge of the whole effort to see how many requirements are being added or eliminated and tracking what the offsets are over time. Canada created an inventory system to track how the number of requirements changed over time. He explained that deregulatory actions can be new regulations and it's important to distinguish between a new regulatory burden and a regulation that's actually eliminating regulatory burdens.

Senator Wells then recognized Rep. Jon Hardister. North Carolina's rank with the tax foundation has improved from being the 44th worse state for tax to the 11th best state. Since North Carolina is the 8th worst state for regulations, Rep. Hardister asked Dr. Broughel for suggestions to improve this ranking to move in a positive direction.

Dr. Broughel suggested an actual reduction target and deadline which is similar to what British Columbia did. Dr. Broughel also suggested regulatory reviews to look for unnecessary burdens to either remove, modify, improve or update.

Rep. Hardister asked if the review was similar to the Rules Review Commission.

Mr. Jeff Hudson, Legislative Analysis, said the Rules Review Commission reviews all new regulations and all new rules adopted by state agencies unless they are exempt from those requirements. Approximately two or three years ago, the Legislature enacted a process for all agencies to review and readopt all their rules on a ten year basis. The Rules Review Commission has been administering that and they are ahead of schedule. They are about halfway through the process and will get the first cycle done in the next two to three years. Mr. Hudson also noted that any new rules are subject to ten letters of an objection provision and can be sent to the Legislature for review and potential disapproval. North Carolina has a number of regulatory review processes in place.



Senator Wells recognized Dr. Jon Hardister. Rep. Hardister asked Dr. Broughel if British Columbia created a policy that if there was a new regulation in place, they have to eliminate two.

Dr. Broughel explained that was correct and in order to achieve a one-third reduction, two needs to come off the books. At one point, British Columbia was eliminating as many as five for every new one added. The Rules Review Commission distinguishes reviews that are new regulations and makes new recommendations before they go into place. They also review old regulations that have been on the books for a while. North Carolina instituted a sunset provision a couple of years ago. A sunset review forces some regulatory burdens to be removed whereas a sunset provision wouldn't require that.

Rep. Elmer Floyd was recognized by Senator Wells. Rep. Floyd said sometimes state agencies don't participate. Agencies would submit the rule but fail to submit what they cross-reference. He asked Dr. Broughel for suggestions on how that could be addressed.

Dr. Broughel suggested the importance to have an oversight body to make sure the 'one in' and 'one out' or 'one in, two out' policies are being followed. Procedural changes might have to be actually put into place.

Senator Wells recognized Senator Dan Barrett. Senator Barrett asked if human services and environmental are the two most regulated in North Carolina.

Dr. Broughel said they were the largest titles.

Senator Barrett asked if British Columbia distinguished between different areas or just if human services would be a new regulation. Someone else would have to take one out and that could be a bit arbitrary.

Dr. Broughel explained a different policy could be set by an agency. If someone thought the environmental code title was too big and the health title is too small, a different cap could be set by different titles or different agencies. The United Kingdom is allowing trading across agencies. They have a similar 'one in', 'three out' policy and agencies accumulate offsets and trade them with other agencies that need them.

Senator Barrett asked if British Columbia tried a process for regulators to weed out unnecessary regulations and did they try a process where they tried to get the agency to do it voluntarily.

Dr. Broughel responded that the federal level has made a number of efforts to review the code and it hasn't slowed the growth of federal regulation.

Senator Barrett asked how British Columbia went about changing culture.



Dr. Broughel said sometimes awards are given to regulators for finding ways to remove regulations from the books as little incentives.

Senator Wells recognized Rep. Jonathan Jordan. Rep. Jordan said he has reviewed information from the periodic review of existing rules and found that 13% of existing rules have been removed. He asked if any other states have implemented regulatory reform efforts and asked how they were proceeding.

Dr. Broughel said Texas had passed a law this past year that revenue regulation was going to remove two. Missouri, Nebraska, Illinois, Maryland and Arizona are using the RegData project and Mercatus is producing a spreadsheet of all the words and restrictions in each title, sub-title, chapter and sub-chapter where policymakers can track aggregate restriction counts over time and also by agency.

Rep. Jordan asked if these states are doing the periodic review as North Carolina.

Dr. Broughel said in Missouri, Nebraska and Arizona, executive orders have been issued to look at all the regulations on the book. He said British Columbia is a role model and suggested a statute be put in place to make it permanent.

Senator Wells asked Dr. Broughel if he had any suggestions for North Carolina on moving the needle on regulatory restrictions.

Dr. Broughel responded that there is a lot of interest in occupational licensing reform, which could be married with the kinds of reforms being discussed today. He agreed that certain occupational licensing restrictions are unnecessarily burdensome and are being protected by licensing regimes and not related to health or safety. So barbers, beauticians, cosmetologists that require licensing makes it harder to get those kinds of jobs. It raises the wages of people in those professions but also makes it harder for low income Americans to get good paying jobs and move themselves up the income ladder. These kinds of reviews of old rules on the books would encourage more review of licensing regimes. Licensing boards and commissions title is one of North Carolina's biggest title. That would be an important part of any review process.

Senator Wells said there was one person signed up to speak. Since no one came forward and no further business, the meeting was adjourned.

The meeting adjourned at 10:56 a.m.



Senator Andy Wells
Presiding

Linda Wente, Committee Clerk